IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NOS. 947 TO 957 OF 2005
(Total 11 matters)

S.V.S. Raghavan. ...Petitioner
V/s.
State of Maharashtra & Anr. ...Respondents

Shri G.S. Hegde with Shri T.J. Pandian for Petitioner.
Ms.Shilpa Kapil for Respondent No.2.
Shri S.R. Borulkar, PP for State in W.P.Nos.947 to 951 of 2006.
Shri R.Y. Mirza, APP for State in W.P.Nos.952 to 954 of 2006.
Shri D.S. Mhaispurkar, APP for State in W.P.No.955 to 957 of 2006.

CORAM : V.M. KANADE, J.

DATED : AUGUST 2, 2006

P.C. :-

. Heard learned Counsel for the petitioner and learned Counsel for the respondent.

2. By this group of matters, the petitioner is challenging the issuance of process issued by the Magistrate under Section 138 of the Negotiable instruments Act.

3. It is submitted by the learned Counsel appearing

on behalf of the petitioner that the petitioner had resigned as a Director before the issuance of the cheques and in support of the said submission, he relied on the certified copy of Form No. 32 which indicated that the petitioner was not Director when the cheques were issued. It is submitted that therefore, the petitioner was not liable to be prosecuted under the provisions of Section 138. It is submitted that in the affidavit-in-reply, the factum of resignation had not been disputed but only the date when the petitioner tendered his resignation was disputed by the complainant. Learned Counsel for the respondent, however, submits that the complaint is disputing even the factum of resignation.

4. It is thereafter submitted that the petitioner, therefore, not being Director at the relevant period, the process which was issued by the Magistrate was liable to be quashed. In support of the said submission, learned Counsel relied on the Judgment of this Court in the case of **Pandurang Camotim Sancoalcar V/s. Suresh Prabhakar Prabhu (2001 Criminal Law Journal**

2945). The learned Counsel for the petitioner further submitted that there was no averment in the complaint that the petitioner was incharge or was responsible to the day to day management of the company and even on that ground, the complaint, qua the petitioner, was liable to be quashed. He relied on the Judgments in the case **Kusum Bartheskar V/s. State reported in 1998 (4) LJ** and **K.P.G. Nair V/s. Jindal Menttal Ltd. reported in Judgment Today 2000 (Suppl) SC 509.**

5. Learned Counsel for the respondent, however, vehemently, opposed the submissions made by the learned Counsel for the petitioner. He invited my attention to the Judgment of this Court in the case of **S.B.& T. International Ltd. V/s. State of Maharashtra and** Anr. **2006(1) Bom.C.R. (Cri.) 8.** He submitted that in the said judgment, learned Single Judge of this Court has observed that initially the dispute was regarding factum of resignation, reliance could not be placed on the said document for the purpose of quashing the said complaint since it was duty of the accused to prove that he had resigned and he was no longer Director when the cheque

was issued.

6. I have given my anxious consideration to the submissions made by both the parties. The petitioner is a senior citizen and 75 years of age. In my view, the question whether the petitioner, in fact, had resigned before the issuance of cheque is a question of fact which can only be decided after the evidence is led by both the parties and which finding will have to be recorded by the trial court on this issue and therefore, since the factum of resignation itself is disputed by the complainant, it will not be possible to accept the submission made by the learned Counsel for the petitioner.

7. In this view of the matter, it is not possible to accept the submissions of the learned Counsel for the petitioner. However, it is made clear that considering the age of the petitioner, the petitioner is granted exemption from appearing in the trial Court.

8. Learned Magistrate shall not issue any summons

to the petitioner and even his plea can be recorded through an Advocate. His statement under Section 313 also may be recorded through an Advocate who is duly empowered by him in that behalf.

9. The trial Court is directed to decide the matter, as expeditiously as possible. The complainant is directed to serve the other accused, as expeditiously as possible and in any case, within a period of three months. The trial Court to decide the case within one year.

10. All questions raised in these petitions are kept open.

11. Writ Petitions are disposed of in the above terms.

(V.M. Kanade, J.)